

MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND
PROGRAM

February 23, 2007

COMMISSIONER'S CONFERENCE ROOM
IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET
DES MOINES, IOWA

Liz Christiansen sat as Chair for the absent Susan Voss and called the Iowa UST Board meeting to order at 10:05 A.M. A quorum was present. Roll call was taken with the following Board members present:

Cathy Rottinghaus (via telephone)
Doug Beech
Stephen Larson (for Michael Fitzgerald)
Jeff Robinson

Also present were:

David Steward, Attorney General's Office
Scott Scheidel, Program Administrator
Lacey Skalicky, Program Administrator's Office
James Gastineau, Program Administrator's Office
Elaine Douskey, Iowa Department of Natural Resources

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the January 26, 2007 meeting were reviewed. Mr. Beech moved to approve the minutes, Ms. Rottinghaus seconded the motion, and by a vote of 4-0, the minutes were approved.

CLOSED SESSION

Ms. Christiansen noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. Therefore no closed session convened.

PUBLIC COMMENT

Ms. Christiansen requested any comments from the public present. There were no comments at this time.

BOARD ISSUES

A. Legislative Update

Mr. Scheidel presented to the Board a number of pending bills in committee at the State Capitol that potentially could affect the Iowa UST Fund Board. Bills of interest included House File 188, Senate File 77, Senate File 133, Senate Study Bill 1105, Senate File 28, and House Study Bill 199. He noted that House Study Bill 199 involved changes and clarifications related to the DNR UST Section. The study bill would provide clarification regarding DNR authority to certify third party inspectors, as well as, regarding the implementation of the Federal Energy Policy Act. The subcommittee had asked if the UST Board wanted to take a position on the bill. Mr. Scheidel noted to the subcommittee that the Board was supportive of the provisions in the bill that involved the UST Fund statutes, however he did not offer a position regarding other provisions of the bill that didn't involve the Board directly, however at worst the Board would be neutral on those other provisions. The Board opted to not take a specific position regarding the provisions of the study bill outside of what Mr. Scheidel had previously communicated to the legislators at the time.

Mr. Scheidel stated the rest of the bills might peripherally involve the Board in some way. He discussed Senate File 77, which came up every year, and would separate the Department of Natural Resources (DNR) into an Environmental Protection agency and a Natural Resources agency. He stated he didn't sense any new interest in the bill this session. Also, Mr. Scheidel explained that representatives from Petroleum Marketers and Convenience Stores of Iowa (PMCI) had contacted him to discuss a change in the language regarding No Further Action (NFA) claims, stating that they would like more definition about what NFA status means, when can site owners know that their liability is released, and if released when can DNR re-open the site for additional work. PMCI was in search of more protection for their members beyond the UST Fund's \$100,000 NFA claims. Mr. Scheidel stated that if PMCI wanted to move forward with any proposed changes to the language, he would keep the Board members informed via electronic mail.

B. Change in December 7, 2006 Meeting Minutes

Mr. Scheidel presented the Board with an amended version of the December 7, 2006 meeting minutes. The December minutes had included an inaccurate statement about the guidance document drafted by the Environmental Protection Agency (EPA) in response to the Federal Energy Policy Act. The previously approved December minutes had erroneously stated that the EPA guidance document would allow for site owner self-inspection of UST's. The guidance documents actually state that they would not allow for site owner self-inspection, due to the conflict of interest that it would present.

Although it was never stated in the December meeting discussion that the guidance document would not allow for site owner self-inspection, the message was conveyed that self-inspection had brought up a conflict of interest question. Therefore the December meeting minutes were amended to read as follows:

“However, she explained that the EPA focus groups for each provision had been meeting and gathering comments from states for over a year to date, and the resulting draft language in their guidance document included the question of conflict of interest with regard to site owners doing their own site inspections.”

Mr. Larson made a motion to approve the December meeting minutes as amended, and Ms. Rottinghaus seconded the motion. The amended December minutes were approved by a vote of 4-0.

C. Status of the LPT with PMMIC

Mr. Scheidel updated the Board stating that the Board had agreed to the terms of the loss portfolio transfer with Petroleum Marketers Management Insurance Company at the last Board meeting. Mr. Scheidel noted that he would execute the agreement and the result would involve the closure of 10 UST Fund claims.

D. DNR Update

Elaine Douskey from the Department of Natural Resources (DNR) passed out two handouts for reference. The first memo was directed to Tim Smith of the United States EPA in December. The memo was the Iowa DNR response to the draft language guidelines to states with regard to implementing the inspection provisions of the Energy Policy Act of 2005. The guideline language had been discussed at the Iowa UST Board meeting in December, and Mr. Scheidel had provided Ms. Douskey with comments for inclusion on behalf of the Board. The memo strongly recommended that EPA include language in their guidelines to allow states to determine whether a conflict of interest exists in the case of a site owner or a site employee completing a compliance inspection of a site. The memo conveyed the safeguards that Iowa’s program had set into place to prevent conflicts of interest. Ms. Douskey stated that she was hopeful that EPA would consider Iowa’s comments, as well as the comments from other state programs, and incorporate their suggestions into their final draft of guidelines.

Ms. Douskey reported that underground storage tank tag renewals had been mailed to operators recently, and the new permanent tags were to be attached to the tank or compartment. The tags would have a unique number to go with each tank or compartment. Next year, the renewal tags for each tank or compartment would be smaller. Ms. Douskey stated that the new process was explained to operators in mailed notices, as well as, in person at the PMCI expo.

Also, Ms. Douskey said that a meeting with DNR field offices was held in February to discuss compliance audits of inspections. They also discussed their roles with regard to assisting the LUST section. An example would include site visits to corrective action sites to make sure remediation systems are up and running. And a meeting with the representative chairing the legislative subcommittee was held about HSB 199 (also SSB 1226) to discuss the technicalities of the proposed changes in the Energy Policy Act, including owner/operator training program, fuel delivery prohibition, and secondary containment for new or replaced tank systems. Also, she said the DNR wanted to move the statutory language that authorizes the certification of groundwater professionals (GWP’s) from the UST Fund Board statute over to the DNR

regulating statute. The DNR had always run the GWP certification program; however the authority remained in the Board's statute, and the program duties were relayed to the DNR by 28E agreement.

The second memo to the Board from Tim Hall, Bureau Chief, explained the Department's need for a permanent position in their Legal Services Bureau to perform a variety of duties, including responsible party (RP) searches with regard to LUST sites, and cooperation with the UST Administrator's Office with regard to various LUST issues. The currently temporary position had been provided for the last year by an EPA grant. The position had proved so valuable that the DNR was seeking a permanent funding source for a permanent position – not the same as this one, as the EPA money was neither regular nor renewable. The position would assist LUST project managers with the legal tracking of responsible parties, bankruptcies, and any related property transactions, so that the project managers could focus solely on the technical aspects of their duties. In addition, the new position would allow for review of local environmental covenants to potentially provide for reclassification of some sites.

Because the position would provide for assistance to two other programs within the Iowa Geological Survey and Land Quality Bureau (IGSLQ), those programs' funds could be used to pay for ½ of the position. In the memo, Mr. Hall offered that if the Board agreed the services of such a position had been and would continue to be useful to the Board's interests, the Board might consider an agreement whereby the Board pays the DNR for ½ of the position in the absence of sufficient EPA grant money. The DNR expected to continue to receive EPA grant money; however the source could prove unreliable. The memo stated that “during the periods of time when EPA monies were made available, the Board would not compensate the DNR for any of this position – yet the collaborative work would continue....”

Mr. Scheidel stated that he and Mr. Hall had discussed how such an agreement might be arranged involving a 28E agreement in which the Board would agree to pay for 1/3 of the cost of the position (split with 2 other programs) if federal funding was not available, and quarterly priority meetings would be held to determine that the focus for UST Fund sites was maintained to extent agreed upon. Mr. Scheidel spoke positively of the similar temporary position, which had allowed for increased communication between the Administrator's Office and the Legal Services Bureau of the DNR regarding LUST sites and their owners. He stated that Mr. Hall's memo was for Board information, and he had not yet heard if the other two programs would put forth their share.

Mr. Larson stated that if someone had already been hired for the position, that should be disclosed. Ms. Douskey confirmed that the permanent position would be a new attorney position that would be filled competitively; therefore it had not yet been filled. She explained the new position would involve a variety of duties from referrals to the Attorney General's Office to management of access agreements with site owners and with neighboring property owners, etc. Mr. Scheidel confirmed that he expected a formal proposal and/or agreement to be presented to the Board from DNR at the next Board meeting. Mr. Larson inquired if the position would be proposed to the Board for the fiscal year 2008 budget year. Mr. Scheidel assumed that to be the case, but he would wait to see a formal proposal from the DNR.

Mr. Beech inquired about HSB 199 provisions, which seemed to allow for DNR rule-making authority with regard to many provisions including training programs for operators. From an industry standpoint, he felt that it would be beneficial to operators to have input at the time rules are ready to be drafted regarding those provisions, rather than having the rule-making guidelines put into place before those provisions were to be addressed. Without the EPA guidelines being completed, he stated that DNR might consider waiting to put rule-making into legislation after receiving input from the industry.

Ms. Douskey responded that the rule-making provisions were put into the legislation now to allow for the DNR to move forward on all of the Energy Policy Act provisions and to have the authority in place to begin rule-making immediately at the time the guidelines come out. She stated the language with regard to rule-making was general in nature. Mr. Beech responded that the current bill would give DNR authority up front, but he suggested they remove those provisions that were not yet required from the pending bill language and deal with those provisions legislatively when they come up.

Mr. Scheidel inquired whether the DNR had considered what they would do if the EPA decides to not allow for owner/operator self-compliance inspections. Ms. Douskey was unaware of any prepared response, however she relayed that it was her understanding that non-compliance with the EPA guidelines would jeopardize EPA funding of the state's programs.

PROGRAM BILLINGS

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services\$ 118,222.00
Consulting Services – March 2007 (\$65,638.00)
Claims Processing Services – March 2007 (\$52,584.00)
2. Attorney General's Office\$14,336.40
Services provided for Underground Storage Tank Program
January 2006 billing
3. Iowa Department of Revenue\$2,211.82
Environmental Protection Charge Collections
4th Q Billing (October – December 2006)

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Larson and a second by Mr. Beech, the billings were approved by a vote of 4-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the January activity reports, financial reports and opt-in reports were in the Board packets.

ATTORNEY GENERAL'S REPORT

Mr. Steward stated that he had nothing to report to the Board at this time.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 8606559 – Casey's Marketing Co., Delmar

This site was classified as high risk. This was a no further action (NFA) certificate claim. The original file for LUST 7LTR05 incurred costs totaling \$34,222.88. Chemical oxidation was proposed at the site. Previous authority on the original claim was \$75,000. Current NFA claim has incurred \$2,252.12 to date. NFA claim authority requested to \$100,000 (maximum) for a corrective action design report (CADR) and implementation of the CADR.

A motion to approve the claim authority was submitted by Mr. Larson and seconded by Ms. Rottinghaus. Approved 3-0. Mr. Beech abstained from the discussion and the vote.

2. Site Registration 8605666 – Macmillan Oil Co., Des Moines

This was a second Board report for a low risk site. This was a settlement agreement case of AST vs. UST based on 75% of costs incurred subject to a 35% co-payment for costs beyond \$100,000. The UST Fund had paid \$165,173.37 of \$265,050.11 in approved costs. The groundwater professional had submitted a site monitoring report to reclassify to no further action with free product in May 2003, and small quantities of free product remained. The groundwater professional suggested hand bailing. Previous authority to \$180,000 had been granted, of which \$165,173.37 was expended to date. Additional authority to \$210,000 was requested for a possible site monitoring report (SMR) and free product recovery (FPR).

Mr. Beech submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. Approved 4-0.

3. Site Registration 8602326 – Union County Shop, Creston

This site was high risk for the soil vapor to enclosed space pathway for one residential sanitary sewer main. Soil vapor sampling could not be used to clear the receptor. A large excavation was proposed to remove soil contamination exceeding the target levels. Previous authority to \$75,000 had been granted, of which \$39,462.93 was expended to date. Additional authority to \$450,000 was requested for a SMR and implementation of a soil excavation.

Mr. Gastineau noted that the Administrator's Office was concerned about how the property in question was zoned. He explained that the property didn't lie within the City of Creston, but the city limits were across the street from the property. The parcels across the street were zoned industrial; however county land was generally not zoned. Therefore the site property was not zoned, and according the DNR regulations any un-zoned property would default to residential

property. The site-specific target levels for a residential property were half that of a property zoned as industrial, and the Union County Engineer had sent an electronic mail message to Mr. Gastineau recommending that the site property be considered an industrial property. Mr. Scheidel added that they had asked the groundwater professional to do corrective action plans for the varying target levels due to the different zones. He expected that the interested parties would meet with the DNR project manager to discuss the possibility of changing the target levels.

A motion to defer the claim authority request until the March Board meeting was submitted by Mr. Beech and seconded by Mr. Larson. Motion passed by a vote of 4-0.

4. CRPCA 0312-35 Sexton & Wesley

This site was contracted to Array Environmental in 2004 to address contamination at two individual sites in Kossuth County communities of Wesley and Sexton. Both sites were originally assessed under the UST closure contract project. Based on the assessments, both sites were classified high risk due to plastic water lines, vapor receptors, and nearby private wells. Soil excavations and plastic water line replacements had been completed at both sites; however additional evaluations were needed to determine the appropriate risk to nearby water wells and vapor receptors. The original agreement for the project was written for 2 years with the option of four 1-year extensions. The Board was requested to authorize the 2nd extension of the consultant agreement for this project to complete the needed evaluations at the two sites. No change in the Board's funding authorization was requested for the project at this time. The current contract authority remained at \$200,000.

Mr. Larson submitted a motion to approve the 1-year extension for the project, and Ms. Rottinghaus seconded the motion. The motion passed by a vote of 4-0.

5. CRPCA 0312-36 College Springs & Coin

This site was contracted to Array Environmental in 2004 to address contamination at two individual sites in the communities of College Springs and Coin. Both sites were assessed under the UST closure contract project. Based on the assessments, both sites were classified high risk due to plastic water lines, vapor receptors, and in College Springs, due to proximity to two municipal water wells. Plastic water lines were replaced at both sites, and additional work was completed at College Springs to remove source materials. The original agreement for the project was written for 2 years with the option of four 1-year extensions. The Board was requested to authorize the 2nd extension of the consultant agreement for this project to continue site monitoring and free product recovery activities in College Springs, as well as, free product recovery activities in an extensive plume in Coin. No change in the Board's funding authorization was requested for the project at this time. The current contract authority remained at \$300,000.

Mr. Larson submitted a motion to approve the 1-year extension for the project, and Ms. Rottinghaus seconded the motion. The motion passed by a vote of 4-0.

6. CRPCA 0308-31 Chelsea

This site was contracted to Trileaf Corporation in 2003 to address contamination at one site in Chelsea, Iowa. The scope of the project included additional testing, plastic water line replacement and soil excavation to remove contamination above site specific target levels. The original scope of the project had been completed, and additional activities were necessary due to the presence of remaining contamination. Current activities at the site are pending to reduce the risk classification through an environmental covenant on the property. The original agreement for this project was written for 2 years with the option of four 1-year extensions. The Board was requested to authorize the 2nd extension of the consultant agreement for this project to continue activity through 2007. Although Tama County acquired the subject property for back taxes, and the City of Chelsea acquired the property from Tama County, neither party had filed a claim for remedial benefits to date. No change in the Board's funding authorization was requested for the project at this time. The current contract authority remained at \$120,000.

Mr. Larson submitted a motion to approve the 1-year extension for the project, and Mr. Beech seconded the motion. The motion passed by a vote of 4-0.

CONTRACTS ENTERED INTO SINCE THE JANUARY 26, 2007 BOARD MEETING

Mr. Scheidel noted that he signed the loss portfolio transfer agreement between the Board and PMMIC in the presence of the Board this day.

OTHER ISSUES

Mr. Scheidel stated the next meeting of the Iowa UST Fund Board was scheduled for Friday, March 23, 2007; however that week was spring break for many. The Board opted to meet on March 30, 2007 at 10:00 A.M.

CORRESPONDENCE AND ATTACHMENTS

Mr. Gastineau presented a carry-in item of correspondence regarding the gas additive MTBE found in the drinking water in the City of Manning. The City had shut down one of its 15 municipal water wells. He noted there were nine LUST sites in Manning with eight classified as no action required (NAR).

Ms. Christiansen asked if there was any further business, and there being none, Mr. Larson moved to adjourn, and Ms. Rottinghaus seconded the motion. By a vote of 4-0, the Board adjourned at 11:08 A.M.

Respectfully Submitted,



Scott M. Scheidel
Administrator